IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

TF-1

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION TO DENY DEFENDANT'S MOTION TO SUPPRESS

Before the Court is Defendant Silvio Lucchesi's Motion to Suppress Search, filed on February 20, 2019. (ECF No. 38.) The United States filed its Response opposing the Motion on March 4, 2019. (ECF No. 44.) The Motion was referred to the Chief Magistrate Judge, (ECF No. 42), who held a hearing on the matter on April 30, 2019. (*See* ECF No. 52.) On June 12, 2019, the Magistrate Judge issued a Report and Recommendation (the "Report") on Defendant's Motion to Suppress, suggesting that the Motion should be denied because the officers were lawfully present in Defendant's residence when they observed illegal drugs in plain view and then, based on that information, obtained a warrant and executed a search of the residence. (ECF No. 58, 21-22.) The Defendant did not file any objections to the Magistrate Judge's Report and Recommendation.

For the following reasons, the Court finds that the Magistrate's Report and Recommendation should be ADOPTED and Defendant's Motion to Suppress should be DENIED.

FINDINGS OF FACT

In her Report and Recommendation, the Chief Magistrate Judge provides, and this Court adopts and incorporates, proposed findings of fact in this case. (ECF No. 58, 4–12.)

LEGAL STANDARD

Congress passed 28 U.S.C. § 636(b) "to relieve some of the burden on the federal courts by permitting the assignment of certain district court duties to magistrates." *United States v. Curtis*, 237 F.3d 598, 602 (6th Cir. 2001). Pursuant to the provision, magistrate judges may hear and determine any pretrial matter pending before the Court, except various dispositive motions. 28 U.S.C. § 636(b)(1)(A). Regarding those excepted dispositive motions, magistrate judges may still hear and submit to the district court proposed findings of fact and recommendations for disposition. 28 U.S.C. § 636(b)(1)(B).

The standard of review that is applied by the district court depends on the nature of the matter considered by the magistrate judge. *See Baker v. Peterson*, 67 F. App'x 308, 310 (6th Cir. 2003) (citations omitted) ("A district court normally applies a 'clearly erroneous or contrary to law' standard of review for nondispositive preliminary measures. A district court must review dispositive motions under the *de novo* standard."). Motions to suppress evidence are among the motions in criminal cases that are subject to *de novo* review. *See* 28 U.S.C. § 636 (b)(1)(A); *U.S. Fid. & Guarantee Co. v. Thomas Solvent Co.*, 955 F.2d 1085, 1088 (6th Cir. 1992).

Upon review of the evidence, the district court may accept, reject, or modify the proposed findings or recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1). Any party who disagrees with a magistrate's proposed findings and recommendation may file written objections. 28 U.S.C. § 636(b)(1)(C). However, the district court is not required to review any aspect of the magistrate's report and recommendation that is not objected to by either party. *Thomas v. Arn*,

474 U.S. 140, 150, 106 S. Ct. 466, 472, 88 L. Ed. 2d 435 (1985). A district judge should adopt the

findings and rulings of the magistrate judge to which no specific objection is filed. *Id.* at 151.

ANALYSIS

The Chief Magistrate Judge recommends that Defendant's Motion to Suppress the search

of his residence should be denied. (ECF No. 58, 3, 22.) The Report states that any objection held

by either party must be filed within fourteen (14) days after the service of the Report. (Id. at 23.);

see also 28 U.S.C § 636(b)(1)(C) ("Within fourteen days after being served with a copy [of the

Report], any party may serve and file written objections to such proposed findings and

recommendations as provided by rules of court.") Neither party filed objections to the Report

within the allotted time.

In the absence of any objections, this Court is encouraged to adopt the Report in its entirety.

Arn, 474 U.S. at 151. Adopting the Report is consistent with the purposes of § 636, particularly

judicial economy and protecting against the "duplication of time and effort" caused when "both

the magistrate and the district court perform identical tasks." Howard v. Sec'y of Health & Human

Servs., 932 F.2d 505, 509 (6th Cir. 1991).

CONCLUSION

Upon de novo review, the Court hereby ADOPTS the Magistrate Judge's Report and

Recommendation to **DENY** Defendant's Motion to Suppress.

IT IS SO ORDERED on this 27th day of September 2019.

s/John T. Fowlkes, Jr.

John T. Fowlkes, Jr.

United States District Judge

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